

REMARKS

Claim 92 has been amended herein. Support for the amendments can be found throughout the specification, including paragraphs [0073] and [0068]. Claims 2-17, 19-32, 34-51, 53-65, 67-74, 76-85, 87-91, 93-101, 103-115, 117-126, 128-138, 140-146, and 148-156 have been previously cancelled. Claims 1, 18, 33, 52, 66, 75, 86, 102, 116, 139, 147, and 157 have been previously withdrawn. Accordingly, Claims 92, 127 and 158-165 remain pending. In view of the remarks and amendments herein, reconsideration is respectfully requested.

Interview Summary

Applicants and their undersigned attorney thank Examiner Audet for the time and courtesy extended to the undersigned during the telephone interview on May 20, 2009. During the telephone interview, the pending rejection under 35 U.S.C. §112 was discussed. Applicants proposed clarifying claim 92 as amended herein.

The examiner also questioned the utility of SEQ ID NO: 4, which was not found to be reasonably taught or suggested by the prior art of record. Applicants advised the examiner that, as discussed in paragraphs [0031] and [0072] of the specification, the inventors discovered that SEQ ID NO: 4 preferentially binds to BDNF in the vasculature of older hearts, especially truncated trkB receptors. (See also Example 5). Applicants also discovered that these truncated trkB receptors are more prevalent in older, less healthy hearts. As discussed in paragraphs [0030] and [0034], Applicants also discovered that younger, more healthy hearts have more TNF receptors than do older hearts, and that SEQ ID NO: 1 selectively homes to TNF receptors in the vasculature of the heart.

Therefore, as discussed in paragraphs [0073] and [0077] and set forth in Claim 92, the ratio of binding of SEQ ID NO: 1 and SEQ ID NO: 4 can determine healthy versus damaged areas of a heart vasculature in a mammal. Also, as discussed in paragraph [0068], the peptides of

SEQ ID NO: 4 can be used to deliver a functional moiety to a mammalian heart having damaged vasculature, as set forth in Claim 127.

Rejection Under 35 U.S.C. §112

Claims 92, 127 and 158-165 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. More specifically, the examiner asserts that the term “condition” in the preamble of Claims 92 and 127 is ambiguous and bears a dual meaning. It is asserted that the “condition of the heart” can mean relative strength or overall health of the heart, or it can connote a specific disorder or disease that may impact the heart.

In order to clarify that Applicants intend to claim the former, Claim 92 has been amended to delete the word “condition” and, instead, more clearly indicate that the method is directed to determining healthy versus damaged areas of the heart vasculature in a mammal. This language comports with the language already present in the “wherein” clause at the end of Claim 92.

Accordingly, Applicants respectfully request withdrawal of the §112 rejections of Claim 92 and the claims dependent thereon.

With regard to independent Claim 127, the word “condition” is not used. Accordingly, Applicants respectfully assert that the §112 rejection cited in the Office Action is not applicable to Claim 127. Therefore, withdrawal of the §112 rejections of Claim 127 and the claims dependent thereon is respectfully requested.

Conclusion

Accordingly, it is now believed that this application is in condition for further consideration and examination. If resolution of any remaining issues is required prior to the examination of the application, it is respectfully requested that the examiner contact Applicants’

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attorney at the telephone number provided below.

Respectfully submitted,

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